



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Roland Evans  
943 Ten Rod Road  
Farmington, NH 03835

Re: 1070 Ten Rod Road, Farmington

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 06-009**

July 7, 2006

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Air Resources Division to Roland Evans, pursuant to RSA 125-C:15, RSA 141-E:16 and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$5,000 be imposed against Roland Evans for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Air Resources Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Roland Evans is an individual having a mailing address of 943 Ten Rod Road, Farmington, NH 03835.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. RSA 141-E authorizes DES to reduce the exposure of the public to asbestos fibers through rules adopted by the Commissioner relative to work practices and engineering control standards for asbestos abatement activities. Pursuant to this authority, the Commissioner has adopted NH Administrative Rules Env-A 1800, *Asbestos Management and Control*.
2. Pursuant to RSA 141-E:16, the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 141-E and rules adopted pursuant thereto, in accordance with RSA 125-C:15, I-b(b).
3. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env- A 100 *et seq.*
4. RSA 125-C:15, I-b(b) authorizes DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
5. Env-A 1802.01(u) defines "owner or operator" as follows: "'Owner or operator' means 'owner or operator of a demolition or renovation activity' as defined in 40 CFR 61.141, namely

‘any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.’”

6. Env-A 1803.03 requires each property owner or operator to provide written notification to DES and the city/town health officer, as applicable to the worksite location, in accordance with Env-A 1803.06, at least 10 working days before any demolition activity begins. This notification is required regardless of the amount of asbestos-containing material (“ACM”), if any, contained in the facility.

7. Env-A 1804.01 requires each property owner or operator to hire an asbestos inspector to survey the structure to be demolished and determine whether any asbestos is present prior to any activities that might disturb asbestos fibers.

8. If asbestos is present, each property owner or operator is required to follow Env-A 1805, *Work Practice Requirements*, which sets forth the procedures for the proper removal and disposal of ACM. In particular, Env-A 1805.02 requires that the contractor and personnel involved in an asbestos abatement project be licensed and certified, respectively, Env-A 1805.07 requires that regulated ACM (“RACM”) be placed wet into water-tight containers for transport to an appropriate landfill, and Env-A 1805.09(b) requires that all RACM be removed from a structure in accordance with the applicable provisions of Env-A 1800 prior to the demolition of that structure.

9. Env-A 1001.04 allows open burning when it is conducted in accordance with all local ordinances, is authorized by an official having jurisdiction over open burning, whenever authorization is required, does not create a nuisance, and includes only materials burned in conformance with Env-A 1001.

10. Env-A 1001.05(d) allows on-site burning by the landowner of brush, leaves, or untreated wood from the construction or demolition of a building, provided the material originates on-site. All other demolition debris is non-conforming and, therefore, is prohibited from open burning.

11. On December 21, 2005, the Farmington Fire Department responded to a fire at 1070 Ten Rod Road in Farmington (“the Property”).

12. DES learned of the fire and conducted a site visit on December 27, 2005. The DES inspector observed charred wood and sheetrock backing in a burn pile on the Property. The floor of a mobile home and the intact foundation of another building were also observed.

13. DES’s investigation revealed that Robert Souliere, Jr., is the owner of the Property, and that Evans Excavating was hired to demolish a 12' x 60' mobile home and a 20' x 30' addition, and to remove the debris from the Property.

14. Mr. Evans, as owner of the Evans Excavating business, supervised the demolition of the structures on the Property.

15. DES contacted Mr. Evans on January 3, 2006. Mr. Evans stated that he had demolished the structures in question, removed three truckloads of cleaned wood, and set fire to a debris pile on

the Property on December 21, 2005. No inspection for asbestos was made prior to the demolition activities.

16. Mr. Evans is the operator of the Property pursuant to Env-A 1802.01(u).

#### **IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES**

1. Mr. Evans violated Env-A 1803.03 by failing to provide written notification to DES at least 10 days prior to the demolition of two structures on the Property. DES has determined this violation to be a major deviation from the requirements with a minor potential for harm, for which RSA 125-C:15,I-b(b) specifies a fine of between \$851 and \$1,500. DES is seeking a fine of \$1,500 for this violation.

2. Mr. Evans violated Env-A 1804.01 by failing to hire an asbestos inspector to survey the structures on the Property to determine whether any asbestos-containing materials were present prior to the demolition of the structures. DES has determined this violation to be a major deviation from the requirements with a moderate potential for harm, for which RSA 125-C:15,I-b(b) specifies a fine of between \$1,251 and \$1,750. DES is seeking a fine of \$1,750 for this violation.

3. Mr. Evans violated Env-A 1001.04 by burning non-conforming materials on the Property. DES has determined this violation to be a major deviation from the requirements with moderate potential for harm, for which RSA 125-C:15,I-b(b) specifies a fine of between \$1,251 and \$1,750. DES is seeking a fine of \$1,750 for this violation.

**The total fine being sought is \$5,000.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, Roland Evans is required to respond to this notice. Please respond no later than August 12, 2006 using the enclosed colored form.**

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

## VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.


\*\* Pursuant to Env-C 601.09(d) and (e), the fine shall be **increased by 10%** for each of six (6) possible aggravating circumstances listed therein **that the Division proves, by a preponderance of the evidence**, apply in this case; up to the maximum fine stated in the statute under which the Division is seeking the fine.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**An administrative fine hearing is a formal hearing.** All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

**COPY**  
  
\_\_\_\_\_  
Robert R. Scott, Director  
Air Resources Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

ec: Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Rick Berry, DES Waste Management Division  
cc: Gretchen Hamel, Legal Unit Administrator  
R. Fowler, Farmington Fire Chief  
H. Pilgrim, EPA Region I  
Farmington Board of Selectmen

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**ROLAND EVANS IS REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN August 12, 2006**

Please check the appropriate line and fill in the requested information below:

**APPEARANCE** On behalf of Roland Evans:

\_\_\_\_\_ I request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Roland Evans:

\_\_\_\_\_ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$5,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit**

**Attn: Michael Sclafani, Legal Assistant**

**P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

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## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.